

No. 422

NEPOTISM—STATE GRAIN LABORATORY—APPOINTMENT OF EMPLOYEES—AGRICULTURE, Department of

Held: It is not in violation of Section 456.2 Revised Codes of Montana, 1935, for the Commissioner of Agriculture to employ the son of the Chief Grain Inspector in one of the State Grain Laboratories of which the father has charge.

June 8, 1942.

Mr. Albert H. Kruse
Commissioner
Department of Agriculture, Labor and Industry
Capitol Building
Helena, Montana

Dear Mr. Kruse:

You request my opinion whether the employment of the son of the Chief Grain Inspector of one of the State Grain Laboratories would be in violation of the nepotism law. You advise the Chief Grain Inspector has complete charge of the laboratory in which the son is to be employed, and is given opportunity to interview all prospective employees, and no person is employed without his approval.

Section 456.2, Revised Codes of Montana, 1935, insofar as applicable here, provides:

"It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emulument any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree, or by affinity within the second degree"

Section 3576, Revised Cades of Montana, 1935, provides:

"The commissioner of agriculture shall appoint a chief inspector of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. Such inspectors shall be able to qualify under the terms and in accordance with the United States federal grain standards act; no such inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products."

Section 3559, Revised Codes of Montana, 1935, provides:

"The commissioner of agriculture shall have the authority to appoint for the performance of the work of said department such number of secretaries, assistants, clerks, and other employees as he shall deem necessary for the performance of the work of the department, subject, however, to the approval of the state board of examiners"

The Division of Grain Standards and Marketing is a part of and under the Department of Agriculture, and consequently, under the supervision of the Commissioner of Agriculture. (Sections 3556 and 3563, Revised Codes of Montana, 1935.)

This office has many times interpreted the nepotism law. Each interpretation must necessarily be based upon the particular facts as applied to the language and intent of the statute. The law has only been before the Supreme Court of the state for interpretation on one occasion. (See *State ex rel. Kurth v. Grinde, et al.*, 96 Mont. 608, 32 Pac. (2nd) 15.) In that case the question involved was whether an alderman who voted for the confirmation of the appointment of a water registrar for the City of Great

Falls was violating the nepotism law, the appointee being related to him in the prohibited degree. Under the city ordinance, the mayor had the authority to appoint the registrar, subject to confirmation by the city council. The Court held Section 456.2, *supra*, restrains only the appointment of a relative and does not prohibit one from voting for the confirmation of an appointment. The Court said:

“The statute by its terms restrains only the appointing power. Its provisions are not sufficiently broad to affect the power or right of one voting for confirmation. Had it been the intention of the legislature to prohibit one from voting for the confirmation of a person within the prohibited degree, it would easily have done so expressly”

Under the facts here given, and the statutes applicable, the Chief Grain Inspector does not have the authority to appoint or employ. This authority is lodged in the Commissioner of Agriculture. Under custom, it is apparent the Chief Grain Inspector is given the right of approval of appointments. In this respect the situation is similar to that in the Kurth case, *supra*.

It is therefore my opinion it is not in violation of Section 456.2, Revised Codes of Montana, 1935, for the Commissioner of Agriculture to employ the son of the Chief Grain Inspector in one of the State Grain Laboratories of which the father has charge.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General